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February 8, 2006

via fax (202) 565-9004 - 6 pages  
and original and 10 copies via DHL Express

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FEB 9 2006

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Honorable Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20006.

Re: STB Docket No. AB-290 (Sub-No. 237X), Norfolk Southern Railway  
Company - Abandonment Exemption - in Baltimore County, MD

Dear Mr. Williams:

Norfolk Southern Railway Company ("NSR") requests that the Board accept this letter in response or reply to two untimely documents in the nature of motions or petitions that were filed February 6, 2006 by James Riffin ("Riffin") in the subject proceeding.

Riffin filed with the Board a protest to NSR's petition for exemption to abandon the subject Line in Baltimore County, MD, dated January 13, 2006. The due date for protests was January 23, 2006. NSR filed a letter dated January 27, 2006, but not received by the Board until January 30, 2006, asking for leave to file the substance of the letter and giving reasons in support. At about the same time, but not in reply to NSR's January 27, 2006 letter, Riffin filed another document, dated January 27, 2006, entitled a "supplemental protest" to the petition. This filing contained both repetitive and new matter and argument. NSR filed a letter dated January 31, 2006 stating that Riffin's untimely additional filing should be stricken, but that in the alternative, the Board could accept the filing and grant NSR alternative relief by accepting NSR's January 31, 2006 letter without undue delay to the handling of the proceeding. Riffin now has filed two more documents dated February 6, 2006. One is justifiable in part; the other is totally without justification and the Board should reject it.

Riffin concludes his February 6, 2006 filing entitled "Protest/Opposition of James

Riffin to Norfolk Southern's January 27, 2006 Reply to Riffin's Protest and NS' January 31, 2006 Reply to Riffin's Supplemental Protest" by moving that the Board strike the two referenced NSR's letters or, in the alternative, accept Riffin's untimely "Protest Supplement" of January 27, 2006 and his further February 6, 2006 "Protest." Since Riffin has included this "motion" in his filing, NSR must reply in opposition to the motion to strike.

NSR's January 27 and 31 letters provide adequate support for their acceptance into the record and consideration by the Board. NSR opposes Riffin's motion to strike for the reasons stated in the letters to support their acceptance and simply asks that these reasons be incorporated by reference here. NSR further notes that NSR stated in the alternative in NSR's January 31, 2006 letter that NSR does not oppose Riffin's alternative request to accept his untimely January 27, 2006 supplemental protest into the record, provided NSR's January 31, 2006 response also is accepted. NSR supports this as the better alternative with respect to the acceptance of these filings.

All of the filings dated in January were made within 8 or 9 days of the deadline date for protests in this proceeding, and should result in a more complete record without unduly hindering or delaying the Board's processing of a decision on the petition for exemption by the April 3, 2006 deadline date for a decision.

NSR does not oppose the Board's acceptance of Riffin's February 6, 2006 "Protest" into the record to the extent it responds to NSR's January 27, 2006 letter and defends the acceptability of Riffin's untimely January 27, 2006 "supplemental protest." In several cases in which the Board has accepted limited and prompt petitioner responses to protests, such as NSR's January 27, 2006 letter, the Board has also accepted promptly filed and limited rebuttal from the protesting party. To the extent Riffin's February 6, 2006 constitutes a limited rebuttal, NSR does not oppose it, regardless of its label. However, NSR believes that in the interest of a correct and a complete record NSR should be able to note for the record that the freight cars Riffin attempted to have delivered to himself at Cockeysville and that he now states contain track maintenance or other equipment on or in them were waybilled and billed as empty cars.

NSR does oppose the acceptance into the record of any new evidence or argument by Riffin in his February 6, 2006 "protest" particularly to the extent such submissions purport to respond to NSR's January 31, 2006 letter. Riffin's January 27, 2006 letter not only was untimely, but it was his second filing for the same purpose in this matter. Except for corrections to his earlier filing, he would not normally be entitled to have this second filing accepted into the record. Because of the short period of time after the protest due date, and under the circumstances, NSR does not oppose the acceptance of Riffin's January 27, 2006 filing into the record, provided NSR's January 31, 2006 response is also accepted. But Riffin should not be permitted to submit new evidence and argument in response to NSR's January 31, 2006 letter under the guise of a response to that letter.

Unlike Riffin's response to NSR's January 27, 2006 letter, his response to the January 31, 2006 should be limited to defending the acceptability of his January 27, 2006 letter, which NSR has already conceded if NSR's response to the new matter introduced in that letter is also accepted. He should not be allowed to use the February 6, 2006 "Protest" to have a third chance to submit even more new evidence and argument on a now more untimely schedule.

Riffin's February 6, 2006 filings in this proceeding mostly contain repetitive or new submissions or arguments in opposition to NSR's petition for exemption. They also are premature filings in connection with Riffin's proposed Offer of Financial Assistance to acquire NSR's freight operating easement and freight rights that are the subject of the petition for exemption to abandon the subject Line between Milepost UU-1.0 and UU-13.8 in Baltimore County, MD. The Board should not permit Riffin to disrupt the handling of this matter or prejudice the right of NSR to have the matter decided on a now complete and reasonably timely developed record simply through the tactic of making further untimely filings.

All the documents tendered to the Board through this date, except for Riffin's February 6, 2006 "motion" discussed below, have been promptly filed at the beginning of the Board's processing period, will not unduly expand the record, will help the Board make a decision on a more complete record and their acceptance and consideration will not hinder or delay the processing of the proceeding by the Board. Thus, the Board should be able to accept them in the interest of having the most complete and correct possible record. The January filings were made within 9 days of the protest due date. Even Riffin's February 6, 2006 protest and this letter are within 14 to 16 days of that date and to the extent they are limited responses, still are within the parameters mentioned in this paragraph.

On the other hand, Riffin's second filing of February 6, 2006, entitled "Motion for a Preliminary Determination" should be rejected in its entirety. Riffin submits a great number of questions, arguments and comments with respect to the possible OFA proceeding that might follow a decision on the merits in this case. He also includes some questions, comments and arguments that concern NSR's proposed notice of intent to abandon some portion of the right-of-way that was assigned to Conrail under the Final System Plan, apparently has never been formally abandoned, but on which the track was removed and no shippers have been located some time between 1976 and 1999.

Riffin's submission is (1) too late to be accepted in response to NSR's petition, (2) irrelevant to the merits of NSR's petition, (3) repetitive of filings made by Riffin in this and previous Board proceedings, (4) premature in raising questions or arguments concerning a possible OFA proceeding following a decision on the merits, and (5) premature in raising questions or comments concerning NSR's proposed notice of intent to abandon a long unused segment of line that was conveyed to Conrail in the Final System Plan but apparently never formally abandoned, despite the fact that track

seems to have been removed from this segment of the right-of-way many years ago<sup>1</sup> Furthermore, Riffin has had two chances to argue (January 13 and January 27 submissions) that the exemption from the OFA procedures should not be granted, the only relevant point currently at issue concerning an OFA to acquire NSR's freight operating easement and rights.

Riffin has shown that he can research Board precedent, but he clearly can neither find nor interpret all the relevant agency authority pertaining to the subject case or further proceedings. If Riffin were represented by counsel,<sup>2</sup> he would not be raising such elementary or irrelevant questions or issues or raising questions or making submissions at the wrong time in a proceeding. Riffin's second February 6, 2006 filing, which appears similar to a request for a declaratory order is procedurally inappropriate, untimely, unduly broadens the issues in this proceeding and introduces several irrelevant questions or issues that do not even need to be answered or addressed. In fact, some of these matters have been raised by Riffin and considered in prior proceedings before the Board.

Riffin's filing notes that he discussed his OFA filing with me on February 3, 2006. Since Riffin is not represented by counsel, I thought I should take Mr. Riffin's call and discuss the matter with him as appropriate. I mentioned that an offeror may face an issue concerning whether Conrail's reserved freight operating rights can be assigned, and on what basis, although I did not have the agreement in front of me to confirm that. I do not think Riffin states to the contrary, but I wish to make clear that I did not suggest that Riffin should raise the matter before the Board now or otherwise prematurely. In fact, my recollection is that I mentioned to him that OFA issues (other than NSR's request for an exemption from the OFA procedures) should be addressed at the proper point in the proceeding.

Riffin should not be permitted to introduce new evidence and argument every time an opposing party points out that one of his filings is untimely or otherwise defective or incorrect, and contrary to the Board's procedures, schedules and usual practices. The most Riffin can expect is that the Board will accept his additional, late January 27, 2006 filing and NSR's January 31, 2006 response and those parts of his February 6, 2006 "protest" that are responsive to prior filings and do not introduce totally new issues or new matter or argument.

Riffin has had his chance to participate. In fact, he has had two such chances

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<sup>1</sup>Pending completion of NSR's research into the matter, NSR is assuming that this right-of-way is between Milepost UU-13.8 and Milepost UU-15.4.

<sup>2</sup>The fact that Riffin is not represented by counsel in a proceeding in which he asserts he has business interests may suggest something about his financial ability to run a short line railroad.

plus a reply if his January 27, 2006 submission is accepted and his February 6, 2006 "Protest" is accepted in whole or in part. He still may have an opportunity to make an additional filing in support of his OFA proposal when the proceeding reaches that stage if the Board grants the petition for exemption but not the exemption from the OFA procedures and if Riffin is found to be financially responsible and his OFA proposal otherwise meets statutory and regulatory standards for OFA negotiations and, if necessary, a proceeding to set terms and conditions. He should not be allowed to have further untimely filings accepted for consideration into the record in this matter before that time.

We appreciate your handling and consideration of this matter.

Yours very truly,



James R. Paschall

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